



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,351	01/31/2001	Daniel H. Maes	00.22US	5974

7590 10/23/2003

Karen A. Lowney, Esq.
Estee Lauder Companies
125 Pinelawn Road
Melville, NY 11747

EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 10/23/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/773,351

Applicant(s)

MAES ET AL.

Examiner

Shaojia A Jiang

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1 and 3-20 (all).Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
10. ☐ Other: _____


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

1922/03

Advisory Action

This Office Action is a response to Applicant's response after FINAL filed on October 6, 2003.

5. Applicant's remarks filed October 6, 2003 with respect to the rejection of claims 1, 3-4, 6-9, 11 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al. (5,925,364, of record) in view of Sebag et al. (5,411,742, of record) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated May 6, 2003.

Applicant argues that Ribier et al. (5,925,364) does not teach the combination of the NADG and cholesterol. However, note that claims 1, 3-4, 6-9, 11 and 18 are not limited to the particular combination of the NADG and cholesterol, but merely reciting a mixture of cholesterol sulfate or salts and an exfoliant broadly.

Applicant's remarks filed October 6, 2003 with respect to the rejection of claims 1, 3-9, and 13-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al. (5,650,166) and the rejection of Claims 10-12 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al. (5,650,166) further in view of Subbiah (6,150,381) and Ichinose et al. (5,702,691), have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated May 6, 2003.

Again, Applicant argument that the '166 reference fails to teach or suggest a mixture of cholesterol sulfate and an exfoliant of the present invention, is not found convincing since Ribier '166 discloses that the composition therein

Art Unit: 1617

comprises cholesterol sulfate (col.3 lines 66-67 in particular) and N-acetylglucosamine (NADG, the instant exfoliant) (see col.5 line 67).

In response to applicant's argument that that the '166 reference are contrary to the present invention because with the mixture of NADG and cholesterol sulfate there is no separation or vehicle, it is noted that the features upon which applicant relies (i.e., the mixture of NADG and cholesterol sulfate there is no separation or vehicle) are not recited in the rejected claim(s). Therefore, it is irrelevant whether the reference includes those features or not. Moreover, note that it is well settled that "intended use" of a composition or product, will not further limit claims drawn to a composition or product. See, e.g., *Ex parte Masham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161, even though the prior art composition in '166 has the different intended use from the instant composition.

Further, as discussed in the Final Rejection, Applicant's one Example shown in the specification at pages 8-10 herein have been fully considered but are not deemed persuasive as to the nonobviousness and/or unexpected results of the claimed invention over the prior art for the reasons below. Example 1 provides no clear and convincing evidence of nonobviousness or unexpected results over the cited prior art since there is no comparison to the same present. Therefore, the evidence presented in specification herein is not seen to be clear and convincing in support the nonobviousness of the instant claimed invention over the prior art.

Art Unit: 1617

Therefore, motivation to combine the teachings of the prior art to make the present invention is seen and no impermissible hindsight is seen. The claimed invention is clearly obvious in view of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. A. Jiang, Ph.D.
Patent Examiner, AU 1617
October 27, 2003